

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DEMETRIA LINDSEY o/b/o	:	
MARQUISHA LINDSEY,	:	NO. 1:07-cv-216
Plaintiff,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
Defendant.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommended that the parties' joint motion for remand be GRANTED, that Plaintiff's motion for attorney fees and expenses be DENIED, and that Defendant's motion to dismiss the request for fees and expenses be GRANTED (doc. 9). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety.

Plaintiff filed a complaint on March 19, 2007, to challenge the Commissioner's denial of an application for Supplemental Security Income (Id.). The parties filed a joint motion on June 14, 2007, to reverse the Commissioner's sentence and remand the case to the Administrative Law Judge ("ALJ") (Id.). On remand, the parties agree that the ALJ will obtain updated medical records, explain the rationale behind rejection of Dr. Walker's assessment, and obtain additional medical expert testimony for clarification (Id.). Plaintiff also filed a motion for attorney

fees and expenses under the Equal Access to Justice Act ("EAJA") on March 24, 2008 (doc. 7).

In the Report and Recommendation, the Magistrate Judge thoroughly reviewed the relevant background and applicable law regarding both motions. The Magistrate Judge first considered the parties' joint motion to remand and concluded that it should be granted for good cause shown (doc. 9). The Magistrate Judge also considered Plaintiff's motion for attorney fees and expenses under the EAJA and found that the motion was filed prematurely as a final judgment had not yet been entered on the case (Id.). Since Plaintiff's motion was filed prematurely, the Magistrate Judge concluded that it should be denied and that Defendant's motion to dismiss the request for fees and expenses be granted (Id.). The Court, having fully considered this matter, finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct.

The parties were served with the Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither Party filed any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. §

636(b)(1)(C). Having reviewed this matter de novo pursuant to 28 U.S.C. §636(b), the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety (doc. 9), and thereby GRANTS the parties' joint motion to remand (doc. 6) and REMANDS this case, DENIES Plaintiff's motion for attorney fees and expenses (doc. 7), and GRANTS Defendant's motion to dismiss the request for fees and expenses (doc. 8).

SO ORDERED.

Dated: 5/27/08

A handwritten signature in black ink, appearing to read 'S. Arthur Spiegel', written over a horizontal line.

S. Arthur Spiegel
United States Senior District Judge